

STATE REPRESENTATIVE
42nd LEGISLATIVE DISTRICT
JASON OVERSTREET

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ATTORNEY GENERAL'S OFFICE
Solicitor General's Division

December 24, 2013

The Honorable Bob Ferguson
Washington State Attorney General
1125 Washington Street SE
Olympia, WA 98504
360-753-6200

RE: The Duty to Issue a Concealed Pistol License (CPL) to an Individual with a Disqualifying Criminal Record in a Foreign Country but no Disqualifying Criminal Record in the United States

Dear Mr. Ferguson,

The City of Sumas received an application for a Concealed Pistol License (CPL) from an individual who has dual citizenship, American and Canadian. He currently resides in Canada. It appears he has no criminal convictions in Washington state or any other state in this country. When the City consulted with the National Instant Criminal Background Check System, or NICS, the City was advised that the applicant would not be prohibited from possessing a firearm. However, information provided by Canadian law enforcement shows the applicant has various convictions in Canada for aggravated assault and other assault offenses, some involving the use of a firearm. The City has denied his request for a CPL.

The applicant stated that this same issue had come up previously when he applied for a CPL in San Juan County. He stated that ultimately San Juan County issued him a CPL. The applicant currently refers to a United States Supreme Court decision in *Small v. United States* [See: *Small v. United States* (03-750), 544 U.S. 385 (2005), 333 F.3d 425, reversed and remanded, at <http://www.law.cornell.edu/supct/html/03-750.ZS.html>]. The applicant claims, based on the *Small* decision, that foreign criminal convictions alone are not a valid basis for prohibiting an applicant from possessing a firearm or obtaining a CPL.

The *Small v. United States* case involved firearms violations in Japan where a criminal defendant had relatively few due process rights and there was an extremely high criminal conviction rate. *Small* was convicted in a Japanese Court of trying to smuggle firearms and ammunition into that country. He served five years in prison and then returned to the United States, where he bought a gun. Federal authorities subsequently charged *Small* under 18 U.S.C. § 922(g)(1), which forbids any person convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess any firearm. *Small* pleaded guilty while reserving the right to challenge his conviction on the ground that his earlier conviction, being foreign, fell outside §922(g)(1)'s scope. The Federal District Court and the Third Circuit rejected

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this argument. The U.S. Supreme Court held that the phrase "convicted in any court" encompasses only domestic, not foreign, convictions. Thus, the opinion is based on the principle that an individual is unlikely to have the protections and safeguards under foreign law that they do in under U.S. law. So even though it would appear that Canadian law provides similar legal due process and burden of proof standards as does the U.S., apparently foreign convictions don't count as a disqualifier in this country.

Washington law provides in RCW 9.41.040 that an individual may not possess a firearm if they have been "convicted in this state or elsewhere of any serious offense". The Small case applies only to federal law and there does not appear to be any Washington case law interpreting the "or elsewhere" language of RCW 9.41.040 as it may pertain to convictions for equivalent serious offenses a foreign country.

I am respectfully requesting your office provide an opinion on the following questions:

- (1) Is an individual who has been convicted of aggravated assault, or other serious offenses, in a foreign country prohibited from possessing a firearm in Washington state, and therefore is prohibited from obtaining a concealed pistol license (CPL) in Washington state due to such convictions?
- (2) Must the city issue a concealed pistol license (CPL) to an applicant notwithstanding the applicant's criminal convictions of aggravated assault, or other serious offenses, in a foreign country?

Thank you for your prompt consideration of my request.

Respectfully,

A handwritten signature in black ink, appearing to read "Jason", with a stylized flourish at the end.

Jason Overstreet, Representative 42nd Legislative District